No. SC-2025-0372

IN THE SUPREME COURT OF ALABAMA

Michael Jennings,

Plaintiff-Appellant,

v.

Christopher Smith, et al.,

Defendants-Appellees.

Certified Question from the U.S. District Court for the Northern District of Alabama, Case No. 1:22-cv-01165-RDP

BRIEF OF AMICI CURIAE THE AMERICAN CIVIL LIBERTIES UNION, THE CATO INSTITUTE, THE SOUTHERN POVERTY LAW CENTER, AND THE WOODS FOUNDATION IN SUPPORT OF PLAINTIFF-APPELLANT

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STATEMENT REGARDING ORAL ARGUMENT

Amici curiae defer to the Court's judgment about whether oral argument is warranted in this case. If the Court determines that oral argument is warranted, amici curiae would welcome the opportunity to participate.

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INTRODUCTION

Responding to a 911 call about a suspicious "black male," police officers confronted Pastor Michael Jennings while he was watering flowers in his neighbors' yard. Jennings said he was "Pastor Jennings," he lived across the street, and he was watering his neighbors' flowers while they were away. Nevertheless, the police demanded physical identification and arrested Jennings after he refused to provide it. As amici explain below, Alabama law did not authorize that arrest.

The question here is not whether it is understandable for the police to want to see a person's physical ID to confirm that what he said is true. Instead, as certified to this Court, the question is whether Alabama Code § 15-5-30 authorizes officers to *demand* physical ID, on pain of arrest, from someone they deem to have provided "incomplete or unsatisfactory" oral answers to questions about their name, address, and actions.

It does no such thing. Section 15-5-30 is entitled "Authority of Peace Officer to Stop and Question." It authorizes the police, under certain circumstances, to stop someone and "demand of him his name, address, and an explanation of his actions." Ala. Code § 15-5-30. But, as the U.S. Court of Appeals for the Eleventh Circuit has squarely held, the statute

nowhere authorizes straying beyond oral questioning into document demands. *Edger v. McCabe*, 84 F.4th 1230, 1239–40 (11th Cir. 2023).

The Eleventh Circuit has applied that holding in this case. After Pastor Jennings sued in federal court, the Eleventh Circuit reversed a district court's decision granting summary judgment to the arresting officers. It held that this case "falls within the purview of *Edger*," and that the officers "lacked even arguable probable cause" to arrest Jennings because he orally provided the information required by § 15-5-30, and because the statute imposed "no legal obligation to provide his ID." *Jennings v. Smith*, 2024 WL 4315127, at *3–4 (11th Cir. Sept. 27, 2024) (per curiam) (unpublished).

On remand from the Eleventh Circuit, the district court certified a question that, in effect, asks this Court if it agrees with the Eleventh Circuit's holdings in *Edger* and *Jennings*. This Court should do so.

The plain meaning of § 15-5-30—given its title, its text, and the overall structure of the Alabama Code—rules out the possibility that it authorizes any demand for any document. The Legislature knows how to draft statutes requiring people to present physical identification. *See* Ala.

Code §§ 13A-11-182 (felons), 32-6-9 (drivers), 17-9-30 (voters). It simply did not do that when crafting § 15-5-30 to authorize "questioning."

Even if § 15-5-30 were ambiguous, rules of construction would require resolving that ambiguity against construing the statute to authorize arrests and prosecutions for failing to supply physical ID. In construing statutes, this Court avoids interpretations that would expand criminal liability or expose statutes to constitutional challenge. Construing § 15-5-30 to authorize document demands would do both: it would expand criminal liability and render § 15-5-30 unconstitutional on multiple grounds. *See, e.g.*, *Kolender v. Lawson*, 461 U.S. 352 (1983) (striking down an identification law as unconstitutionally vague because its text lacked clear standards); *White v. State*, 267 So. 2d 802, 805 (Ala. Crim. App. 1972) (relying on section 45 of the Alabama Constitution to strike down part of the Act that created § 15-5-30 because, in authorizing searches for contraband, it exceeded the scope of the Act's title, which authorized searches only for weapons).

Accordingly, as amici explain below, this Court should hold that § 15-5-30 does not authorize any demands for physical identification.

IDENTITY AND INTEREST OF AMICI CURIAE

The American Civil Liberties Union is a nationwide, nonprofit, nonpartisan organization with nearly two million members and supporters dedicated to protecting the principles embodied in the state and federal Constitutions and our nation's civil rights laws. The ACLU has extensive experience briefing the construction and constitutionality of criminal laws.

The Cato Institute is a nonpartisan public policy research foundation founded in 1977 and dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato's Project on Criminal Justice, founded in 1999, focuses on the scope of substantive criminal liability, the proper and effective role of police in their communities, the protection of constitutional and statutory safeguards for criminal suspects and defendants, citizen participation in the criminal justice system, and accountability for law enforcement.

The Southern Poverty Law Center is a nonprofit civil rights organization and a catalyst for racial justice in the South and beyond, working in partnership with communities to dismantle white supremacy, strengthen intersectional movements, and advance the human rights of

all people. One of the SPLC's goals is to reduce the incarcerated and detained population by decriminalizing and decarcerating Black and Brown people. The SPLC has experience litigating numerous issues involving the criminal legal system and has served as counsel or amicus curiae before the Supreme Court of the United States, federal appellate and district courts, and state courts in its efforts to secure equal treatment and opportunity for marginalized members of society.

The Woods Foundation is an Alabama-based nonprofit legal and advocacy organization committed to advancing the rights and dignity of individuals impacted by the criminal legal system. Our work focuses on ending practices that disproportionately harm marginalized communities, particularly communities of color, and on ensuring that laws are applied in a manner consistent with constitutional protections and fundamental fairness. We have a direct interest in the resolution of the certified question presented here because unlawful arrests based on improper demands for physical identification erode public trust, chill the exercise of civil liberties, and perpetuate racial profiling. The Woods Foundation joins this amicus brief to support a clear and constitutionally

sound interpretation of Alabama Code § 15-5-30—one that prevents its misuse as a tool for unwarranted detention and criminalization.

STATEMENT OF FACTS

I. The arrest of Pastor Jennings

On May 22, 2022, Pastor Michael Jennings went to his neighbors' house to water their flowers. Another neighbor, upon seeing but failing to recognize Pastor Jennings, called 911 to report a suspicious "younger black male." *See* 911 Transcript at 2, *Jennings v. Smith*, No. 1:22-cv-01165 (N.D. Ala. May 19, 2023) (ECF No. 50-1).

Childersburg Police Officer Christopher Smith responded to the 911 call. *Jennings*, 2024 WL 4315127, at *1. Upon arriving at the scene, Officer Smith observed Pastor Jennings holding his neighbor's garden hose and watering flowers. Smith asked Jennings what he was doing on the property, and Jennings responded, "watering flowers." *Id.* Smith then asked if Jennings lived there. *Id.* As the Eleventh Circuit later observed, Jennings replied by providing "information closely track[ing] what officers may request under Alabama Code § 15-5-30 (name, address, and an explanation for one's actions)." *Id.* at *4. Specifically, Jennings said:

> I'm supposed to be here. I'm Pastor Jennings. I live across the street. . . . I'm looking out for the house while they gone. I'm watering they flowers.

Id. at *1.

Officer Smith immediately sought documentary proof that what Jennings said was true. Smith said, "'Okay, that's cool, do you have, like, ID?,' and motioned with his hands as if to request a driver's license." *Id.* In response, Jennings stated, "I'm not gonna give you no ID," and insisted he "did nothing wrong." *Id.*

Officer Justin Gable arrived, and Jennings argued with the officers. *Id.* While doing so, Jennings reiterated that "I'm not gonna show y'all anything," *id.*, evidently in reference to Officer Smith's demand for physical identification. But Jennings reiterated that he lived across the street, and he pointed to his home. *See* Plaintiff's Br. in Opposition to Defendants' Motion for Summary Judgment at 10, *Jennings*, No. 1:22-cv-01165 (N.D. Ala. May 26, 2023) (ECF No. 51-1); Officer Smith Body Worn Camera Video, *Jennings*, No. 1:22-cv-01165 (N.D. Ala. May 12, 2023) (ECF No. 47-4).

The officers arrested Jennings. *Jennings*, 2024 WL 4315127, at *2. They charged him with obstructing governmental operations, in violation

of Alabama Code § 13A-10-2(a), based on a claim that Jennings had committed an independent unlawful act by failing to adequately identify himself. *Id.* at *3. While at the scene, the police also spoke with the 911 caller, who recognized Pastor Jennings and realized that she had made a mistake by calling the police. Memorandum Opinion at 4, *Jennings*, No. 1:22-cv-01165 (N.D. Ala. Dec. 21, 2023) (ECF No. 60). The charges against Jennings were later dismissed.

II. The federal proceedings

Jennings sued the three arresting officers and the City of Childersburg under 42 U.S.C. § 1983. A federal district court granted summary judgment for the officers on the theory that they had qualified and state-agent immunity because they had probable cause to arrest Jennings. The district court also granted the City's motion to dismiss. Jennings then appealed to the Eleventh Circuit.

Both in the district court and on appeal, the officers conceded that, under the Eleventh Circuit's *Edger* decision, "[s]ection 15-5-30 does not require anyone to produce 'physical identification' such as an 'ID' or 'driver's license.'" Defendants' Supp. Br. at 4, *Jennings v. Smith*, No. 1:22-cv-01165 (N.D. Ala. Oct. 10, 2023) (ECF No. 59); *see also* Br. of

Defendants-Appellees at 41–42, *Jennings v. Smith*, 2024 WL 3197749 (11th Cir. June 20, 2024) (making conceding that *Edger* "held that Ala. Code § 15-5-30 does not allow an officer to ask for physical identification like a driver's license"). But the officers argued that "Jennings was not arrested because he simply refused to give Defendants his driver's license" but rather because he had failed to "identify himself." *Id.* This argument apparently boiled down to a claim that Jennings had "refused to provide his name," *see* Defendants' Supp. Br. at 6, *Jennings*, No. 1:22-cv-01165 (ECF No. 59) (emphasis in original), when he introduced himself as "Pastor Jennings" rather than "Michael Jennings."

The Eleventh Circuit rejected that argument and reversed the district court. Contrary to the defendants' account, the Eleventh Circuit concluded that, by explaining that he was "Pastor Jennings," that he lived across the street, and that he was watering his neighbors' flowers, Jennings had supplied information that "closely track[ed] what officers may request under Alabama Code § 15-5-30." *Jennings*, 2024 WL 4315127, at *4. Further, and contrary to the defendants' account of the record, the Eleventh Circuit held that, "[l]ike Edger, Jennings was arrested for his refusal to provide officers with physical identification."

Id. Accordingly, the Eleventh Circuit held that the officers "lacked probable cause for Jennings' arrest for obstructing government operations because Jennings did not commit an independent unlawful act by refusing to give ID." *Id.*

The Eleventh Circuit's decisions in *Edger* and *Jennings* fully bind the federal district court, because the former is a published opinion and the latter is the law of the case. *See* Eleventh Circuit Internal Operating Procedure 7 (2025) (unpublished decisions can be used "to ascertain the law of the case"). Nevertheless, on remand from the Eleventh Circuit, the district court concluded that there is "apparent uncertainty about how to read Alabama Code § 15-5-30." *See* Memorandum Opinion and Order at 12, *Jennings*, 1:22-cv-01165 (N.D. Ala. May 19, 2025) (ECF No. 83). In support of that conclusion, the district court contrasted the Eleventh Circuit's decisions in *Edger* and *Jennings* with the unpublished decision in *Metz v. Bridges*, 2024 WL 5088586 (11th Cir. Dec. 12, 2024) (per curiam) (unpublished). On that basis, the district court certified the following question to this Court:

> Under Alabama Code § 15-5-30, when a law enforcement officer asks a person for his name, address, and explanation of his actions, and the person gives an incomplete or unsatisfactory oral response,

> does the statute prohibit the officer from demanding or requesting physical identification?

See Certification of Question at 2, *Jennings*, 1:22-cv-01165 (N.D. Ala. May 22, 2025) (ECF No. 84).

SUMMARY OF THE ARGUMENT

I. As the Eleventh Circuit held in *Edger*, § 15-5-30 plainly does not authorize demands for documents. To assess plain meaning, this Court considers a statute's title and text, as well as relevant statutory context. *See, e.g.*, *Pitts v. Gangi*, 896 So. 2d 433, 436 (Ala. 2004); *Jordan v. Reliable Life Ins. Co.*, 589 So. 2d 699, 702 (Ala. 1991); *Boutwell v. State*, 988 So. 2d 1015, 1020 (Ala. 2007). Here, the statutory title references only stopping and "questioning"; the text is consistent with that limitation; and, unlike other statutes, § 15-5-30 nowhere requires anyone to present any form of identification. *Compare* Ala. Code § 15-5-30, *with id.* § 13A-11-182 (statute enacted in same year as § 15-5-30 requiring certain people with felony convictions to "exhibit" identification).

II. Even if § 15-5-30 were ambiguous, two rules of statutory construction would require construing it to rule out demands for documents. First, this Court does not construe laws to create criminal liability by implication. *Ex parte Bertram*, 884 So. 2d 889, 891 (Ala. 2003);

Ala. Code §§ 13A-1-3, 13A-1-6. Here, because § 15-5-30 does not expressly create a duty to present physical ID, it should not be construed to have imposed that duty implicitly. Second, this Court construes laws to avoid constitutional conflict. *Ex parte Am. Cast Iron Pipe Co.*, 373 So. 3d 1103, 1112 (Ala. 2022). Here, this Court should not construe § 15-5-30 to contain an implicit, unclear obligation to present physical ID because that construction would render the law: (1) unconstitutionally vague, in violation of due process; (2) unconstitutionally broader than its title, in violation of section 45 of the Alabama Constitution; and (3) subject to challenge under the search-and-seizure and self-incrimination protections of the U.S. and Alabama Constitutions. *See Kolender*, 461 U.S. at 353–58; *White*, 267 So. 2d at 805; *Hiibel v. Sixth Judicial District Court of Nevada*, 542 U.S. 177, 185 (2004).

ARGUMENT

I. The plain meaning of § 15-5-30 does not authorize demands for physical identification.

The Eleventh Circuit held in *Edger*, and repeated in *Jennings*, that the plain meaning of § 15-5-30 rules out any possibility that it authorizes demands for physical ID. That view is correct.

The "cardinal rule" of statutory interpretation in Alabama is that courts should "give effect to the intent of the legislature as manifested in the language of the statute." *Ex parte Z.W.E.,* 335 So. 3d 650, 655 (Ala. 2021) (quoting *Ex parte Moore*, 880 So. 2d 1131, 1140 (Ala. 2003)). Accordingly, courts look first at the words in the statute, giving them their "natural, plain, ordinary, and commonly understood meaning." *Pitts*, 896 So. 2d at 436 (quoting *DeKalb County LP Gas Co. v. Suburban Gas, Inc.,* 729 So. 2d 270, 275 (Ala. 1998)). When the language conveys a plain meaning, the "analysis ends there." *Ex parte McCormick*, 932 So. 2d 124, 132 (Ala. 2005). Here, the analysis of § 15-5-30 should begin and end with its plain meaning, which simply cannot be construed to authorize police officers to require pedestrians to show physical ID.

A. The text of the statute does not require the production of physical identification.

At least three aspects of § 15-5-30's text demonstrate that it does not authorize the police to compel the production of physical ID.

First, as the Eleventh Circuit has explained, because § 15-5-30 authorizes the police to demand only three facts—name, address, and an explanation of the person's actions—demanding physical identification would necessarily "go[] beyond the information required to be revealed

under § 15-5-30." *Edger*, 84 F.4th at 1239. For example, requiring someone to produce a driver's license would necessarily reveal their birth date, certain disabilities, and organ donor status. *See id.* (quoting Ala. Code §§ 32-6-6, 22-19-72). Requiring a school ID would reveal someone's age and the name of their school. And so on. But, under the plain text of § 15-5-30, "[t]here simply is no state law foundation" to compel pedestrians to disclose that information. *Id.*[1]

Second, the title and text of § 15-5-30 confirm that it supplies police authority only to "stop and *question*," not to demand documents. Ala. Code § 15-5-30 (emphasis added). Statutory titles can meaningfully inform statutory interpretation. *Jordan*, 589 So. 2d at 702 (citing *Hamrick v. Thompson,* 165 So. 2d 386 (Ala. 1964)). This is partly because the Alabama Constitution requires that "each law shall contain but one

[1] The unpublished opinion in *Metz* is not the law of the Eleventh Circuit and would not undermine the holding of *Edger* even if it were. In *Metz*, the officer made clear that the suspects could supply either "proof of ID *or* your information." Br. of Defendants-Appellants at 10, *Metz v. Bridges*, 2023 WL 4349827 (11th Cir. June 29, 2023) (emphasis added). But the suspects supplied neither. Thus, although the *Metz* opinion stated that the officer "was allowed to ask Metz for identification," 2024 WL 5088586, at *4, it did not state that the officer could arrest Metz specifically for failing to supply physical identification. The court had no occasion to decide that issue because Metz supplied *neither oral nor physical identification*.

subject, which shall be clearly expressed in its title." Ala. Const. art. IV, § 45. A statute's title therefore sets the "maximum scope" of its text. *Brown v. Nat'l Motor Fleets, Inc.*, 164 So. 2d 489, 490–91 (Ala. 1963) (quoting Carl H. Manson, *The Drafting of Statute Titles*, 10 Ind. L.J. 155, 160 (1934)).

Yet the title of § 15-5-30, as codified, refers only to the "authority of [a] peace officer to stop and question." Ala. Code § 15-5-30. Likewise, in enacting the statute, the Legislature called it an act "[r]elating to the temporary *questioning* of persons in public places and search for weapons, by any lawful officer." Acts 1966, Ex. Sess., No. 157, p. 183, § 1 (emphasis added). Thus, although § 15-5-30 is sometimes described colloquially as a "stop and identify" law, it is in fact a "stop and question" law.

Consistent with its title, the statute's text specifies which oral questions are authorized: a "demand" for someone's name, address, and an "explanation" of their actions. As the Eleventh Circuit noted, these terms refer to oral communications. *See Edger*, 84 F.4th at 1239 ("There is a difference between asking for specific information: 'What is your name? Where do you live?' and demanding a physical license or ID."). It

is true, as the federal district court has noted, that the word "demand" is different from a word like "request." But the difference is that, unlike when the police engage someone in voluntary questioning, responses to questioning under § 15-5-30 are mandatory. *Cf. Atchley v. State*, 393 So. 2d 1034, 1044 (Ala. Crim. App. 1981) (noting that answering police questions is typically optional). But neither the word "demand," nor any other word in § 15-5-30, suggests a mandate to provide a document in addition to oral responses.

Third, and relatedly, the text of § 15-5-30 rules out any possibility that it authorizes document demands because it makes no mention of how the police would implement those demands. Although the certified question in this case posits that the police can perhaps demand physical ID after receiving "an incomplete or unsatisfactory oral response," the statute neither contains those words nor any instructions for interpreting them. Nor does it say what kind of ID will satisfy that demand. Nor does it say what should happen if the pedestrian claims that they do not own an ID, or that they left it at home.

That means the statute supplies no answers to the questions that would inevitably arise if the statute had actually authorized officers to

demand documents. What if, as might have occurred here, the pedestrian left his ID at home while watering his neighbor's flowers? Is he subject to arrest, or is leaving one's ID at home a defense to liability? The statute does not answer these questions because it does not authorize document demands in the first place.

In short, § 15-5-30 plainly authorizes law enforcement, under certain circumstances, to stop suspects and question them about three facts (name, address, actions). As the Eleventh Circuit has held, nothing in the statute can be construed to authorize demands for documents.

B. The structure of Alabama's statutory scheme confirms the statute's plain meaning.

"In interpreting a statute, a court does not construe provisions in isolation, but considers them in the context of the entire statutory scheme . . . ." *Boutwell*, 988 So. 2d at 1020. Here, when read as a whole, the Alabama Code confirms that § 15-5-30 does not authorize law enforcement officers to demand physical identification.

To begin, construing § 15-5-30 to authorize demands for physical ID would contradict the remainder of the Alabama Code, which imposes no general requirement for pedestrians to carry physical ID. As the Eleventh Circuit observed in *Edger*, "neither the parties nor our own

research can identify any Alabama law that generally requires the public to *carry* physical identification—much less an Alabama law requiring them to produce it upon demand of a police officer." 84 F.4th at 1239. Indeed, when § 15-5-30 was enacted in 1966, only about 1.5 million of Alabama's 3.5 million residents had a driver's license.[2] What is more, Alabama didn't start issuing non-driver identification cards until the 1970s. *See* Acts 1975, No. 539, p. 1192, §§ 2, 6. It is highly unlikely that the Legislature would have passed a bill tacitly requiring pedestrians to present ID—under threat of arrest and prosecution—when nothing in the Alabama Code required them to carry ID, and so many of them did not even possess one.

The remainder of the Alabama Code also makes clear that the Legislature is perfectly capable of crafting statutes requiring Alabamians to present physical ID, making the Legislature's decision *not* to do so in

[2] *See* Federal Highway Administration, Licensed Drives, By State, 1949 - 2020, at https://www.fhwa.dot.gov/policyinformation/statistics/2020/pdf/dl201.pdf; U.S. Census Bureau, Population Estimates, Series P-25, No. 404 (Sept. 27, 1968), at https://www2.census.gov/library/publications/1968/demographics/P25-404.pdf.

§ 15-5-30 even more obvious.[3] This Court will not construe statutes to implicitly contain provisions that the Legislature demonstrably "knew how" to draft concretely. *Willis v. Kincaid*, 983 So. 2d 1100, 1108 (Ala. 2007). For example, in *Ex parte Jackson*, 614 So. 2d 405 (Ala. 1993), the Court held that a statute should not be construed to implicitly contain a transferred-intent provision, partly because the presence of an express transferred-intent provision in another statute demonstrated that the Legislature "knew how to draft" one. *Id.* at 407.

That is the situation here. During the same year it enacted § 15-5-30, the Legislature enacted a provision requiring certain persons with multiple felony convictions to register for and "carry [an ID] card with him at all times while he is within the county," and to "exhibit" that card to any law enforcement officer "upon request." Ala. Code § 13A-11-182; *see* Acts 1966, Ex. Sess., No. 421, p. 565, § 3. The Legislature has also imposed comparable requirements on drivers, voters, and sex offenders. *See* Ala. Code §§ 32-6-9, 17-9-30, 15-20A-18. Thus, the Legislature well understands how to craft statutes requiring people to "exhibit" or

[3] For the reasons explained in Part II.B, *infra*, amici do not concede that § 15-5-30 would be constitutional if the Legislature had drafted it to include a requirement to present physical ID.

"display" physical IDs. *See id.* § 13A-11-182, 32-6-9. It even knows how to craft defenses to those requirements. *See id.* § 32-6-9 (providing that, when someone is arrested for driving without a license, he can defend the charge by "produc[ing] in court or the office of the arresting officer a driver's license . . . valid at the time of his arrest.").

But, in enacting § 15-5-30, the Legislature straightforwardly chose not to draft a statute imposing any requirement to exhibit or display any form of physical ID. That legislative choice controls this case.

II. Any ambiguity in § 15-5-30 should be resolved against interpreting it to authorize demands for physical identification.

Even if § 15-5-30 were ambiguous, and its plain meaning did not compel the Eleventh Circuit's holding in *Edger*, rules of statutory construction would still yield the conclusion that § 15-5-30 does not authorize document demands. Amici focus on two such rules: lenity and constitutional avoidance.

A. The rule of lenity applies here.

By statute and case law, Alabama law forbids construing statutory ambiguities in favor of criminal liability. Under Alabama Code § 13A-1-6, all criminal statutes "shall be construed according to the fair import of

their terms to promote justice and to effect the objects of the law, including the purposes stated in Section 13A-1-3." The purposes stated in § 13A-1-3, in turn, include "giv[ing] fair warning of the nature of the conduct proscribed and of the punishment authorized upon conviction" and "prevent[ing] arbitrary or oppressive treatment of persons accused or convicted of offenses." Ala. Code § 13A-1-3(3), (6).

Consistent with those commands, this Court has made clear that "[n]o person is to be made subject to penal statutes by implication." *Clements v. State*, 370 So. 2d 723, 725 (Ala. 1979) (citing *Fuller v. State*, 60 So. 2d 202 (Ala. 1952)); *see also Ex parte Bertram*, 884 So. 2d at 891–92; *Ex parte Pate*, 145 So. 3d 733, 737 (Ala. 2013). Criminal laws must never be "extended by construction" to include behavior not expressly proscribed. *Id.* at 891 (quoting *Ex parte Mutrie*, 658 So. 2d 347, 349 (Ala. 1993)). It is a long-established principle that Alabama courts interpret criminal laws to "reach no further in meaning than their words." *Fuller*, 60 St. 2d at 205; *see also Ex parte* Bertram, 884 So. 2d at 891–92; *Ex parte Pate*, 145 So. 3d at 737. It is thus a "basic rule" that "criminal statutes are to be strictly construed in favor of those persons sought to be subjected to their operation." *Ex parte Bertram*, 884 So. 2d at 891

(quoting *Schenher v. State*, 90 So. 2d 234 (Ala. Ct. App. 1956)); *see also Ex parte Hubbard*, 321 So. 3d 70, 108–09 (Ala. 2020) (Sellers, J., concurring in part) ("[A]ny ambiguity in a criminal statute must be construed against the State and in favor of the defendant.").

For example, in *Pate*, this Court held that going to get a gun during an altercation did not constitute a "physical action" under a statute making it a crime to use physical action to put another person in fear of injury. Ala. Code § 13A-6-23. The Court emphasized that "[o]ne who commits an act which does not come within the words of a criminal statute, according to the general and popular understanding of those words, when they are not used technically, is not to be punished thereunder, merely because the act may contravene the policy of the statute." *Ex parte Pate*, 145 So. 3d at 737 (ultimately citing *Young v. State*, 58 Ala. 358 (1877)).

Those principles apply fully to any ambiguity in § 15-5-30. As noted above, the statute does not mention physical identification at all. At a minimum, and as the Eleventh Circuit demonstrated in *Edger* and *Jennings*, it can be interpreted not to authorize demands for physical ID. Therefore, under cases like *Pate*, it must be interpreted that way.

To the extent the certified question suggests construing § 15-5-30 to trigger a duty to supply physical ID *sometimes*—namely, following an "incomplete or unsatisfactory oral response"—that construction would inject even more ambiguity into the statute. Under that view, when officers begin questioning under § 15-5-30, a suspect would initially have no obligation to provide physical ID. Instead, at some unknown moment, the suspect would *become obligated* to provide ID, owing to some alleged deficiency in his oral response. But nothing in the statute alerts members of the public that they will be subject to a test that appears nowhere in the statute, or, even more ambiguously, how they are supposed to know which responses police, prosecutors, or courts will deem "incomplete or unsatisfactory."

Endorsing that interpretation of § 15-5-30 would fail to "give fair warning" to Alabamians as to how they can avoid criminal exposure. *See* Ala. Code § 13A-1-3(2). Because § 15-5-30 can be construed to avoid this problem—as the Eleventh Circuit has proved—it should be so construed.

B. The canon of constitutional avoidance also applies here.

This Court "construe[s] statutes so as to avoid conflicts with constitutional provisions if possible." *Ex parte Am. Cast Iron Pipe Co.*,

373 So. 3d at 1112 (quoting *City of Homewood v. Bharat, LLC*, 931 So. 2d 697, 701 (Ala. 2005)). In *American Cast Iron Pipe Co.*, this Court rejected a statutory construction that would "implicate[] due-process concerns." 373 So. 3d at 1112. Here, construing § 15-5-30 to authorize demands for physical ID would render the statute subject to constitutional challenge on at least three grounds.

First, construing § 15-5-30 to authorize demands for physical ID when someone gives "incomplete or unsatisfactory" oral responses would render § 15-5-30 unconstitutionally vague under *Kolender v. Lawson*, 461 U.S. 352. *Kolender* addressed a California law requiring suspects to give "credible and reliable" identification upon request by a police officer. *Id.* at 353. The U.S. Supreme Court deemed the statute void for vagueness, in violation of due process, because it "contain[ed] no standard for determining what a suspect has to do in order to satisfy the requirement to provide a 'credible and reliable' identification." *Id.* at 358. Instead, "the statute vest[ed] virtually complete discretion in the hands of the police to determine whether the suspect has satisfied the statute." *Id.*

Construing § 15-5-30 to require suspects to supply some form of physical ID when they give "incomplete or unsatisfactory" oral responses

would render that statute even more defective than the identification law in *Kolender*. The words "incomplete or unsatisfactory" are, of course, just as standardless as the words "credible and reliable." And, unlike in *Kolender*, the words "incomplete and unsatisfactory" do not even appear in the statute at issue here. Allowing law enforcement to impose a document demand mid-questioning, based on a standardless test appearing nowhere in the statute, would therefore render § 15-5-30 unconstitutionally vague.

Second, construing § 15-5-30 to authorize demands for documents would exceed the permissible scope of the statute, as set forth in its title, and render the statute invalid under section 45 of the Alabama Constitution. In fact, the Court of Criminal Appeals previously cited section 45 in striking down part of the Act that created § 15-5-30, based on reasoning that would apply fully if § 15-5-30 were construed to authorize demands for physical ID.

Section 45 of the Alabama Constitution generally requires that "[e]ach law shall contain but one subject, which shall be clearly expressed in its title." Ala. Const. art. IV, § 45. As noted above, § 15-5-30 was created by Act No. 157 of 1966, entitled "AN ACT [r]elating to the

temporary questioning of persons in public places and search for weapons, by any lawful officer." Because, with respect to searches, the title referenced only searches for weapons, the Court of Criminal Appeals held that a portion of the Act purporting to authorize searches for other contraband, even in the absence of weapons, was "necessarily beyond the title of said Act No. 157 and to that extent invalid under § 45 of the Constitution." *White v. State*, 267 So. 2d at 805. By that same logic, because "temporary questioning" is the only kind of information-gathering referenced in the title of Act No. 157, construing the Act to authorize document demands would cause it to stray beyond its title and violate section 45.

Third, construing § 15-5-30 to authorize demands for physical ID would implicate serious search-and-seizure and self-incrimination concerns under both the U.S. and Alabama Constitutions. The U.S. Supreme Court has held that a stop-and-identify law permitting police to make stops based on reasonable suspicion of criminal activity, and requiring only that a suspect disclose his name, does not violate either the Fourth Amendment's protection against unreasonable searches and seizures or the Fifth Amendment's guarantee against compelled self-

incrimination. *Hiibel*, 542 U.S. 177. In doing so, the Court observed that "a police officer is free to *ask* a person for identification without implicating the Fourth Amendment." *Id.* (emphasis added). But the Court in *Hiibel* did not hold that the police may *demand* identification, even from someone they reasonably suspect of criminal activity. The Court had no occasion to decide that question in *Hiibel* because the Nevada statute at issue "[did] not require a suspect to give the officer a driver's license or any other document." *Id.* at 185; *cf. Brown v. Texas*, 443 U.S. 47 (1979) (holding that a law cannot compel someone to provide their identity unless the police have reasonable suspicion).

Thus, *Hiibel* left open the question whether, consistent with the U.S. Constitution, a state can require criminal suspects to produce driver's licenses or other documents based solely on reasonable suspicion. That question is also open, so far as amici are aware, under the Alabama Constitution. *Cf. Turner v. State*, 115 So. 3d 939, 944 (Ala. Crim. App. 2012) (only Westlaw result for citations to *Hiibel* by Alabama courts).

Endorsing the Eleventh Circuit's interpretation of § 15-5-30, under which the police may not demand physical ID, would avoid these serious constitutional questions. That approach is warranted here.

CONCLUSION

Amici respectfully submit that this Court should answer the certified question in the negative and hold, consistent with the Eleventh Circuit's decisions in *Edger* and *Jennings*, that § 15-5-30 does not authorize demands for physical identification.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the word limitation set forth in Alabama Rules of Appellate Procedure 29(c) and 28(j). Microsoft Word's word-count function indicates that this brief contains 5,536 words. I also certify this petition's compliance with the font requirements set forth in Alabama Rule of Civil Procedure 32(a)(7). The petition was prepared in Century Schoolbook font using 14-point type.

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CERTIFICATE OF SERVICE

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